

Applicant notes that all of the current claims are directed to a "confocal probe" and recite various features of a confocal probe. Accordingly, it is clear that such claims are not directed to "subcombinations" usable together in a single combination, but are instead directed to similar devices (i.e., confocal probes). In this regard, Applicant notes that restrictions based on "subcombinations disclosed as usable together in a single combination" should only be applied when claims are direct to various, disparate portions (i.e., subcombinations) of a larger device or system (i.e., combination), which is clearly not the case here. In this case, it is clear that the claims are directed to similar devices (i.e., confocal probes), and not to disparate portions of a larger device or system. If the Examiner maintains the current restriction requirement, Applicant respectfully requests that the Examiner point out where in the present application confocal probes such as those recited in the claims of the different groups are disclosed as "usable together in a single combination".

Accordingly, Applicant submits that the Examiner has not provided a proper grounds for restriction between the different groups of claims. Applicant respectfully requests that the Examiner reconsider and withdraw the restriction requirement for at least this reason.


Further, even if the Examiner's characterization of Groups I and II as defining properly restrictable subcombinations were to be considered correct, Applicant respectfully requests that all of the inventions defined in claims 1-26, nevertheless, be examined in the instant application, pursuant to the guidelines set forth in M.P.E.P. §803. That is, the Examiner is respectfully requested to reconsider the restriction requirement and find that there would not appear to be a "serious burden" on the Patent

and Trademark Office in examining claims directed to the non-elected invention since the Examiner will have to search for a confocal probe quite similar to that of claims 23-25 while searching for the confocal probe of claims 1-22 and 26.

It would appear that the search for the inventions identified by the Examiner would be coextensive or at least significantly overlap. That is, if the Examiner were to perform a search for the invention of Group I, there would not appear to be a serious burden in continuing the examination of the other invention of Group II. For this reason, and consistent with office policy as set forth in M.P.E.P. 803, Applicant respectfully requests that the Examiner reconsider and withdraw the restriction requirement.

Should there be any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
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